

AGREEMENT

THIS PROFESSIONAL SERVICE AGREEMENT, made and entered into by and between the **LOUISVILLE / JEFFERSON COUNTY METRO GOVERNMENT**, by and through its **DEPARTMENT OF PUBLIC PROTECTION, DIVISION OF EMERGENCY MEDICAL SERVICE** herein referred to as “**LMEMS**”, and **UNIVERSITY OF LOUISVILLE (U OF L) RESEARCH FOUNDATION, INC.**, authorized by resolution of the University of Louisville Board of Trustees to act as an agent for receiving grants and research agreements from external funding sources of the **UNIVERSITY OF LOUISVILLE** and its **Department of Emergency Medicine**, herein referred to as “**Consultant**”;

WITNESSETH:

WHEREAS, LMEMS has oversight responsibilities of the delivery of emergency medical services by all Metro agencies and the suburban fire protection districts, including first responders, as well as those Metro employees and suburban Fire Department members trained to use automated external defibrillators (AED); and

WHEREAS, LMEMS is in need of the services of a “medical director(s)” to direct and oversee the delivery of 911 emergency medical services and Metro’s AED programs; and

WHEREAS, the University of Louisville School of Medicine, Department of Emergency Medicine has been determined by the Metro Government to have the necessary experience, expertise and qualifications to provide those services,

NOW, THEREFORE, it is agreed by and between the parties hereto as follows:

I. SCOPE OF PROFESSIONAL SERVICES

A. Consultant shall, at the request of the Metro Government, provide services under the terms of this professional Agreement. The Consultant's work product may be reviewed from time to time by the Metro Government for purposes of determining that the services provided are within the scope of this Agreement.

B. Consultant, while performing the services rendered pursuant to this Agreement, may incidental thereto utilize agents or employees of such Consultant. However, such use must be documented in the monthly invoice submitted for those services rendered.

C. If from time to time Consultant needs to utilize the records or personnel of the Metro Government relative to performing the services required of this Agreement, then Consultant shall notify the proper agent of the Metro Government of this need and arrangements may be made for that contingency. However, at no time shall the Metro Government make available its resources without the full consent and understandings of both parties.

D. The services and work product or deliverables of Consultant as "medical director" shall include but not be limited to the following as requested by LMEMS on behalf of LMEMS, the Louisville Fire Department and the Suburban Fire Protection Districts:

(1) Reviewing, developing and revising medical patient treatment protocols and communications dispatch algorithms- As needed

(2) Participating in evaluation of patient care - Daily Basis

(3) Assisting EMS in direct patient care - Daily basis via radio, telephone, and direct contact. Assistance shall also be provided in the field on an “on call” basis, as determined by the Director of EMS.

(4) Providing medical consultation to EMS personnel - Daily basis via radio and by personal contact in the field or in the Emergency Room. Includes monthly chart review sessions, and periodic chart audits.

(5) Working with EMS personnel in the development of new skills, techniques, and treatment modalities as necessary and appropriate.

(6) Serving as a liaison with the local medical community;

(7) Interacting with regional, state, and local EMS authorities on issues relating to EMS standards, needs and requirements and the optimization of resource utilization;

(8) Maintaining continuing education appropriate for the EMS medical director, administrative staff, communication and patient care personnel;

(9) Restricting or limiting patient care functions of staff and developing plans for appropriate remediation

(10) Establishing patient destination policies;

(11) Establishing initial qualification of personnel involved in patient care and dispatch;

(12) Developing, implementing, and maintaining a quality improvement program for continuous system and patient care improvement;

(13) Working with AED sites to establish protocols for AED deployment and conducting a review of each use of an AED. (KRS 311.667)

(14) Designing, developing and providing oversight for occupational health standards and processes, consulting on and taking responsibility for occupational health decisions with emphasis on exposure and infection control.

E. The Consultant and LMEMS shall cooperate to provide, as convenient and appropriate, opportunities for personnel from either organization to participate in relevant educational activities of the other.

F. LMEMS and the Consultant will cooperate in the collection of pertinent data that can be utilized by both organizations for the following purposes:

- (1) Scientific publications
- (2) Grant applications and/or budgets
- (3) Development of new or improved patient care techniques

II. FEES AND COMPENSATION

A. The Metro Government shall pay Consultant **SIX THOUSAND TWO HUNDRED DOLLARS (\$6,200.00)** per month after receiving Consultant's invoice describing the work it has performed. Total compensation payable to Consultant for services performed shall not exceed **SEVENTY FOUR THOUSAND FOUR HUNDRED DOLLARS (\$74,400.00)**. Consultant shall maintain an active clinical and operational role with EMS, the extent of which is to be determined by the EMS Chief Executive Officer and the Chair of the Department of Emergency Medicine at the University of Louisville. Additionally, through this agreement, the Chief Executive Officer of EMS will

maintain a clinical and administrative role with the Department of Emergency Medicine at the University of Louisville.

B. It is understood by all parties that the Consultant provides on-line medical supervision and control on a 24-hour basis, seven days per week. Physicians in the Emergency Department answer requests from EMS via telephone, radio, and in-person on a priority basis. Hourly accounting of this time by both parties would be cumbersome, and would not be beneficial to either party.

C. Payment shall only be made pursuant to a detailed invoice presented monthly, which invoice shall indicate a descriptive accounting of the service under the contract. Copies of invoices or receipts for third party charges must be included with the Consultant's invoice when payment is requested.

D. The Metro Government shall not reimburse out of pocket expenses under this Agreement.

III. DURATION

A. This is a professional service contract which shall begin July 1, 2006 and shall continue through and including June 30, 2007.

B. This Agreement may be terminated by submitting thirty (30) days' written notice to the non-terminating party of such intent to terminate. This Agreement may also be terminated by any party, without notice to the non-terminating party, because of fraud, misappropriation, embezzlement or malfeasance or a party's failure to perform the duties required under this Agreement. A waiver by either party of a breach of this Agreement shall not operate or be construed as a waiver of any subsequent breach.

C. In the event of termination, payment for services complete up to and including date of termination shall be based upon work completed at the rates identified in this Agreement.

IV. EMPLOYER/EMPLOYEE RELATIONSHIP

It is expressly understood that no employer/employee relationship is created by this Agreement nor does it cause Consultant to be an officer or official of the Metro Government. By executing this Agreement, the parties hereto certify that its performance will not constitute or establish a violation of any statutory or common law principle pertaining to conflict of interest, nor will it cause unlawful benefit or gain to be derived by either party.

V. RECORDS-AUDIT

Consultant shall maintain during the course of the work, and retain not less than five years from the date of final payment on the contract, complete and accurate records of all of Consultant's costs which are chargeable to the Metro Government under this Agreement; and the Metro Government shall have the right, at any reasonable time, to inspect and audit those records by authorized representatives of its own or of any public accounting firm selected by it. The records to be thus maintained and retained by Consultant shall include (without limitation): (a) payroll records accounting for total time distribution of Consultant's employees working full or part time on the work (to permit tracing to payrolls and related tax returns), as well as canceled payroll checks, or signed receipts for payroll payments in cash; (b) invoices for purchases receiving and issuing documents, and all the other unit inventory records for Consultant's stores stock or capital items; and (c) paid invoices and canceled checks for materials purchased and for subcontractors' and any other third parties' charges.

VI. INSURANCE REQUIREMENTS

Insurance coverage shall be required of Consultant in accordance with Schedule A attached hereto.

VII. HOLD HARMLESS AND INDEMNIFICATION CLAUSE

Consultant and the University of Louisville (U of L), as agencies of the Commonwealth of Kentucky, although vested with sovereign immunity, are subject to the Board of Claims Act, KRS 44.070-44.160. Claims against Consultant and U of L relating to personal injury or property damage may be filed and decided under the provisions of the Act. To the extent permitted by that Act and other applicable law, the Consultant, as agent for the University of Louisville for receiving grants and research agreements from external funding sources, shall defend, indemnify and hold harmless the Metro Government from and against any and all claims which may result from any error or omission arising out of Consultant's and U of L's performance under this Agreement.

VIII. REPORTING OF INCOME

The compensation payable under this Agreement may be subject to federal, state and local taxation. Regulations of the Internal Revenue Service require the Metro Government to report all amounts in excess of \$600.00 paid to non-corporate contractors. Consultant agrees to furnish the Metro Government with its taxpayer identification number (TIN) prior to the effective date of this Agreement. Consultant further agrees to provide such other information to the Metro Government as may be required by the IRS or the State Department of Revenue.

IX. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Kentucky. In the event of any proceedings regarding this Agreement, the Parties agree that the venue shall be the state courts of Kentucky or the U.S. District Court for the Western District of Kentucky, Louisville Division. All parties expressly consent to personal jurisdiction and venue in such Court for the limited and sole purpose of proceedings relating to this Agreement or any rights or obligations arising thereunder. Service of process may be accomplished by following the procedures prescribed by law.

X. AUTHORITY

The Consultant, by execution of this Agreement, does hereby warrant and represent that he is qualified to do business in the State of Kentucky, has full right, power and authority to enter into this Agreement.

XI. CONFLICTS OF INTEREST

Pursuant to KRS 45A.455:

(1) It shall be a breach of ethical standards for any employee with procurement authority to participate directly in any proceeding or application; request for ruling or other determination; claim or controversy; or other particular matter pertaining to any contract, or subcontract, and any solicitation or proposal therefor, in which to his knowledge:

(a) He, or any member of his immediate family has a financial interest therein; or

(b) A business or organization in which he or any member of his immediate family has a financial interest as an officer, director, trustee, partner, or employee, is a party; or

(c) Any other person, business, or organization with whom he or any member of his immediate family is negotiating or has an arrangement concerning prospective employment is a party. Direct or indirect participation shall include but not be limited to involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing, or in any other advisory capacity.

(2) It shall be a breach of ethical standards for any person to offer, give, or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment, in connection with any decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling or other determination, claim or controversy, or other particular matter, pertaining to any contract or subcontract and any solicitation or proposal therefor.

(3) It is a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

(4) The prohibition against conflicts of interest and gratuities and kickbacks shall be conspicuously set forth in every local public agency written contract and solicitation therefor.

(5) It shall be a breach of ethical standards for any public employee or former

employee knowingly to use confidential information for his actual or anticipated personal gain, or the actual or anticipated personal gain of any other person.

XII. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter set forth herein and this Agreement supersedes any and all prior and contemporaneous oral or written agreements or understandings between the parties relative thereto. No representation, promise, inducement, or statement of intention has been made by the parties that is not embodied in this Agreement. This Agreement cannot be amended, modified, or supplemented in any respect except by a subsequent written agreement duly executed by all of the parties hereto.

XIII. OCCUPATIONAL HEALTH AND SAFETY

Consultant agrees to comply with all statutes, rules, and regulations governing safe and healthful working conditions, including the Occupational Health and Safety Act of 1970, *29 U.S.C. 650 et. seq.*, as amended, and KRS Chapter 338. Consultant also agrees to notify the Metro Government in writing immediately upon detection of any unsafe and/or unhealthful working conditions detected at any Metro-owned property where Consultant performs work under this Agreement. Consultant agrees to indemnify, defend and hold the Metro Government harmless from all penalties, fines or other expenses arising out of the alleged violation of said laws.

XIV. SUCCESSORS

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

XV. SEVERABILITY

If any court of competent jurisdiction holds any provision of this Agreement unenforceable, such provision shall be modified to the extent required to make it enforceable, consistent with the spirit and intent of this Agreement. If such a provision cannot be so modified, the provision shall be deemed separable from the remaining provisions of this Agreement and shall not affect any other provision hereunder.

XVI. COUNTERPARTS

This Agreement may be executed in counterparts, in which case each executed counterpart shall be deemed an original and all executed counterparts shall constitute one and the same instrument.

XVII. CALCULATION OF TIME Unless otherwise indicated, when the performance or doing of any act, duty, matter, or payment is required hereunder and a period of time or duration for the fulfillment of doing thereof is prescribed and is fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period of time. For example, if on January 1, Consultant is directed to take action within ten (10) calendar days, the action must be completed no later than midnight, January 11.

XVIII. CAPTIONS The captions and headings of this Agreement are for convenience and reference purposes only and shall not affect in any way the meaning and interpretation of any provisions of this Agreement.

XIX. VIOLATIONS OF AND COMPLIANCE WITH KENTUCKY LAWS The Consultant shall reveal any final determination of a violation by the Consultant or subcontractor within the previous five (5) year period pursuant to KRS Chapters 136, 139, 141, 337, 338, 341 and 342 that apply to the Consultant or subcontractor. The Consultant shall be in continuous compliance with the provisions of KRS Chapters 136,

139, 141, 337, 338, 341 and 342 that apply to the Consultant or subcontractor for the duration of the contract.

WITNESS the agreement of the parties hereto by their signatures affixed hereon.

**APPROVED AS TO FORM AND
LEGALITY:**

**LOUISVILLE/JEFFERSON COUNTY
METRO GOVERNMENT**

**IRV MAZE
JEFFERSON COUNTY ATTORNEY**

**KIM ALLEN, DIRECTOR, DEPARTMENT
FOR PUBLIC PROTECTION**

Date: _____

Date: _____

EMERGENCY MEDICAL SERVICES

**DR. NEAL J. RICHMOND, M.D.
DIRECTOR**

Date: _____

RECOMMENDED BY:

**UNIVERSITY OF LOUISVILLE (UofL)
SCHOOL OF MEDICINE**

**UNIVERSITY OF LOUISVILLE
RESEARCH FOUNDATION, INC.
APPROVED BY:**

**DANIEL F. DANZL, M.D., FACEP
PROFESSOR AND CHAIR
DEPT. OF EMERGENCY MEDICINE**

**DAVE KING
RESEARCH ADMINISTRATION**

Date: _____

Date: _____

**Taxpayer Identification No.
(TIN): 61-1029626**

**Louisville/Jefferson County
Revenue Commission Account
No.: _____**

SCHEDULE A

I. INSURANCE REQUIREMENTS

ULRF agrees to cause the University of Louisville, School of Medicine, Department of Emergency Medicine and their practicing physicians to purchase and maintain a Professional Liability insurance policy at a minimum limit of liability of \$1,000,000 for each alleged Wrongful Act, Error or Omission for services performed under this agreement, retroactive to the Effective Date of the Agreement. In the event that this insurance is written on a "Claims Made" form, **ULRF**, shall, upon request, furnish evidence that the liability coverage has been maintained for at least one (1) year after expiration of this agreement, either by submitting renewal policy with a Retroactive date of not later than the date of services commenced under this agreement, or by evidence that an Extended Reporting Period Endorsement has been purchased that will apply to any and all claims arising from services performed under this agreement.

ULRF shall provide proof of such coverage by submitting a Certificate of Insurance to the Louisville Metro Health Department (to be reviewed and approved by the Louisville Metro's Risk Management Division) and shall provide renewal Certificates of Insurance to the Louisville Metro's Risk Management Division so that continuous coverage is provided during the term of this agreement. Upon request, certificates shall also be provided for practicing physicians.

Insurance is to be placed with insurance companies licensed in the State of Kentucky, or by non-admitted carriers in accordance with Kentucky Insurance Law

(KRS 304.10-040) or through a self-insured group or captive insurance company which is approved by the Louisville Metro's Risk Management Division.

Certificates of Insurance as requested above shall be furnished to:

Louisville Metro EMS Department

437 South Third Street

Louisville, KY 40202

AND

Louisville/Jefferson County Metro Government

Finance Department, Risk Management Division

611 West Jefferson Street

Louisville, KY 40202

Approval of the insurance by the Louisville Metro's Risk Management Division shall not in any way relieve or decrease the liability of **ULRF and the University of Louisville, School of Medicine, Department of Emergency Medicine and practicing physicians** providing services hereunder. It is expressly understood that Metro does not in any way represent that the specified limits of liability or coverage or policy forms are sufficient or adequate to protect the interest or liability of ULRF, University of Louisville, School of Medicine, Department of Emergency Medicine or its practicing physicians.